Amendment No. 7 to SB0325

Beavers
Signature of Sponsor

AMEND Senate Bill No. 325* House Bill No. 234

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the section in its entirety and by substituting instead the following:

39-17-431.

(a) Except as provided in this section, any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy.

(b)

(1) A product or category of products that contains any immediate methamphetamine precursor shall be exempt from the requirements of this section if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The board of pharmacy, in consultation with the Tennessee bureau of investigation, shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors:

(A) The ease with which the product can be converted to methamphetamine, including the presence or

absence of a “molecular lock” completely preventing a product's use in methamphetamine manufacture;

(B) The ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion, or other form; and

(C) Any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3) The board of pharmacy shall maintain a public list of the exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list. The list shall include, but not be limited to, products in the form of gel capsules and liquid preparations that contain any immediate methamphetamine precursor. The term “gel capsule” means any soft gelatin liquid-filled capsule that contains a liquid suspension, that, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin covered solid does not constitute a “gel capsule” under this subdivision (b)(3).

(c)

(1) A pharmacy shall not sell to the same person products containing more than three and six tenths (3.6) grams per day, or more than nine (9) grams per thirty-day period, of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall

weight of the products. The prohibition contained in this subsection (c) shall not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed healthcare practitioner authorized to prescribe by the law of this state.

(2) This subsection (c) also shall apply to pharmacist-generated prescription orders of the product pursuant to § 63-10-206. The provision of the patient education and counseling as a part of the practice of pharmacy shall be required when product is issued under this subsection (c).

(3) There shall be no protocol or procedure mandated by any individual or corporate entity that interferes with the pharmacist's professional duty to counsel and evaluate the patient's appropriate pharmaceutical needs and the exercise of the pharmacist's professional judgment as to whether it is appropriate to dispense medication.

(d) The pharmacist or any pharmacy technician or pharmacy intern under the supervision of the pharmacist shall require any person purchasing an over-the counter product containing pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The pharmacist, pharmacy technician, or pharmacy intern shall maintain an electronic record of the sale under this subsection (d) and the record may be maintained in the form of a pharmacist prescription order as provided by § 63-10-206(c). The electronic record shall include the name and address of purchaser; name and quantity of product purchased; date and time purchased; purchaser identification type and number, such as driver license state and number; and the identity, such as name, initials or identification code, of the dispensing

pharmacist, pharmacy technician, or pharmacy intern. If a system is not able to record the identification type and number, the pharmacist, pharmacy technician, or pharmacy intern shall write the identification type and number on the prescription order. The electronic record shall also be maintained in a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased.

(e)

(1) By January 1, 2012, each pharmacy in this state shall have in place and operational all equipment necessary to access and use the national precursor log exchange (NPLEx) administered by the national association of drug diversion investigators (NADDI); provided such system is available for access and use free of charge to the pharmacies or the state.

(2) Beginning January 1, 2012, before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine not otherwise excluded from the record keeping requirement, a pharmacy shall electronically submit the required information to the national precursor log exchange (NPLEx) administered by the national association of drug diversion investigators (NADDI). Except as provided in subsection (j), the seller shall not complete the sale if the system generates a stop sale alert.

(3) Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the electronic sales tracking system in accordance with this subsection (e) shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection (e) and shall be immune from

liability to any third party unless the retailer has violated this subsection (e) in relation to a claim brought for such violation. This subsection (e) shall not apply to a person who obtains the product or products pursuant to a valid prescription.

(4) The data entered into, stored and maintained by the national precursor log exchange (NPLEx) may only be used by law enforcement officials, health care professionals and pharmacists and only for controlling the sale of methamphetamine precursors.

(f) If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall maintain a written log until such time as the pharmacy or retail establishment is able to comply with the electronic sales tracking requirement.

(g) A pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons therefore. The board of pharmacy may grant an exemption for good cause shown, but in no event shall such exemption exceed one hundred eighty (180) days. Any pharmacy or retail establishment that receives an exemption shall maintain a hardcopy logbook and must still require the purchaser to provide the information required under this section before completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or inspector of the board of pharmacy during normal business hours.

(h) Nonexempt products containing an immediate methamphetamine precursor shall be maintained behind the counter of the pharmacy or in a locked case within view of and within twenty-five feet (25') of the counter.

(i)) NADDI shall forward Tennessee transaction records in NPLEx to the Tennessee bureau of investigation weekly; provided, that the bureau executes a memorandum of understanding with NADDI governing access. Real time access to NPLEx information through the NPLEx online portal shall be provided to law enforcement in the state free of charge.

(j) The NPLEx system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this section. The system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if the sale is not completed. Each instance in which the override function is utilized shall be logged by the system.

(k) A violation of subsections (a)—(j) of this section is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, the violation shall be reported to the board of pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a).

(l)

(1) A person who commits an offense on or after the effective date of this act that results in such person being placed on the methamphetamine registry established by § 39-17-436,

shall be prohibited from purchasing a nonexempt product for the entire seven (7) years the person is required to be on the methamphetamine registry.

(2) The Tennessee bureau of investigation shall devise a method by which judgments sent from the court clerks to the bureau concerning applicable methamphetamine convictions may be accessed by the national association of drug diversion investigators (NADDI) who administer national precursor log exchange (NPLEx) so persons convicted of applicable methamphetamine offenses are prohibited from purchasing nonexempt products at the point-of-sale using the NPLEx system.

(3) The bureau shall also notify NADDI when a person is removed from the methamphetamine registry pursuant to § 39-17-436(e). When notified, the person shall be removed from NPLEx and is permitted to purchase nonexempt products.

(4)

(A) Any person who knowingly sells or delivers a nonexempt substance to a person who is on the methamphetamine registry commits a Class A misdemeanor.

(B) Any person who purchases or attempts to purchase a nonexempt substance while such person is on the methamphetamine registry commits a Class A misdemeanor.

(m)

(1) It is an offense for a person not authorized to do so to knowingly engage in any of the following conduct with respect to a nonexempt product containing an immediate methamphetamine

precursor and required to be maintained behind the counter of the pharmacy as specified in subsection (e) of this section:

(A) Sell, attempt to sell, or possess the product with the intent to sell it to another for a non-medical use or unlawful purpose;

(B) Purchase or attempt to purchase the product for another or possess the product with the intent to deliver it to another for a non-medical use or unlawful purpose;

(C) Purchase the product at different times or locations for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a one (1) day or thirty (30) day period; or

(D) Use a false identification to purchase the product for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a one (1) day period or thirty (30) day period.

(2)

(A) A violation of this subsection (m) shall be a Class A misdemeanor, punishable by fine only of five hundred dollars ($500). All proceeds from fines imposed pursuant to this subsection shall be used by the jurisdiction making the arrest for methamphetamine clean-up activities in that jurisdiction.

(B) Any person convicted of a violation of this subsection shall be placed on the methamphetamine registry established by § 39-17-436 and such person shall be prohibited from purchasing a nonexempt product for the

seven (7) years such person is required to be on the registry.

(n) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

SECTION 2. This act shall take effect on July 1, 2011, the public welfare requiring it.